25th defendant, Effendi Tatuho; 26th defendant, Eddy Ernst Loway

are entitled to three months' wages as damages for the wrongful determination of their contract, the amount in each case (their salaries not being in dispute) to be determined by the Registrar.

As regards the 9th defendant, who was paid his wages up to the 30th of June 1958, the amount of damages must be reduced by the equivalent of 14 days' wages, the actual figure (as his salary is not in dispute) to be determined by the Registrar.

In addition, the following defendants are entitled to wages due to them up to the 16th June, 1958:—

4th defendant, 3 days' wages; 6th defendant, 2 days' wages; 8th defendant, 3 days' wages; 10th defendant, 3 days' wages; 11th defendant, 3 days' wages; 14th defendant, 2 days' wages; 15th defendant, 3 days' wages; 18th defendant, 3 days' wages; 21st defendant, 3 days' wages; 22nd defendant, 5 days' wages; 24th defendant, 2 days' wages; 25th defendant, 3 days' wages; 26th defendant, 2 days' wages

the amount in each case (the basis of assessment not being in dispute) to be determined by the Registrar.

There is evidence that the first defendant, Edward Johan Wuisan, was owed arrears of wages up to the 16th of June 1958 amounting to Indonesian Rupiahs 1,302.25. He must receive judgment for that amount, but there is no evidence before me as to the rate of exchange at the relevant times. The actual amount in Singapore currency must be determined by the Registrar after consultation, if necessary, with learned counsel in the case.

Until these arrears of wages are paid the defendants in question are entitled to a lien on the motor vessel "Ophir" and to the appropriate declaration.

It remains to consider the question of an injunction. Having regard to the attitude of the respective parties, to which I have already referred, I consider that an injunction is unnecessary at this stage and should not yet be granted. The fair order, in my view, is that the plaintiffs should have liberty to apply for an injunction restraining the defendants or any of them from remaining in the ship in question, or in any other of the plaintiff company's ships in Singapore, in the event of a refusal on the part of the defendants or any of them of a reasonable offer of repatriation to Indonesia under suitable conditions. Provided, of course, that the plaintiff company — as I have no doubt they will — will have continued to maintain the defendants pending the completion of the necessary transport arrangements.

On this matter of repatriation, I was asked by counsel for the defendants to order that each defendant should be repatriated to the particular port at which he signed on with the plaintiff company. In all the circumstances I do not regard this as a reasonable condition to impose upon the plaintiff company and I consider that justice will be done if the defendants are offered repatriation to Djakarta or any other Indonesian port which may be agreed between the parties.

There remains the question of costs. Having regard to all the facts of the case and in particular to the circumstance that the defendants were, in my view, justified in regarding the order of transfer to Djakarta as an unlawful order, I consider that the fair order is that there should be no order as to costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Marshall & Smith.*

NEDERLANDSCHE HANDEL-MAATSCHAPPIJ N.V. (NETHERLANDS TRADING SOCIETY) v. KOH KIM GUAN

[O.C.J. (Rose C.J.) April 20, 1959]

[Singapore — Suit No. 815 of 1958]

Practice — Standard of proof — Civil action involving allegation of fraud — High standard. Necessity for 'external' evidence to corroborate 'internal' evidence, value of internal evidence.

It has long been the practice in countries where the English system of law operates for the Courts, in civil cases, to require a high standard of proof in cases where fraud is alleged.

Shortly before the plaintiff bank's closing time on Saturday, June 21, 1958, the defendant presented for payment a cash cheque for $3,000, drawn by a third party. The plaintiffs allege that by an act of inadvertence on the part of their cashier a sum of $30,000 was in fact paid instead of $3,000 as was written on the cheque. The defendant denies that he received more than $3,000. Evidence were given by their staff as to procedure and practice of the plaintiff bank and the transaction concerning the cheque in question. The Court considered that the plaintiffs could do more than adducing internal evidence of their employees in order to put the matter beyond mere suspicion or conjecture, and suggested: "It would, for example, be highly relevant in a case of this nature if the plaintiffs were able to establish some change for the better in the circumstances of the defendant, that he had, for instance, incurred unusual expenditure or had unexpectedly settled outstanding obligations. It may be that such evidence is difficult to obtain but where a defendant of good character is

charged with a fraud of this nature something more is required than internal evidence of the bank's employees. In the absence of any such corroborative evidence the Court is not disposed to disbelieve the defendant's denial."

Cases referred to:—

(1) *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247.

(2) *New York v. Heirs of Phillips decd.* [1939] 3 All E.R. 952, 955.

(3) *Narayanan Chettyar & Anor. v. Official Assignee, Rangoon* A.I.R. 1941 P.C. at p. 95.

(4) *Bater v. Bater* [1951] P. 35.

CIVIL SUIT.

J. E. Lloyd for the plaintiffs.

R. H. Green for the defendant.

Cur. Adv. Vult.

Rose C.J.: It is common ground that shortly before the plaintiff bank's closing time on Saturday, the 21st of June, 1958 the defendant presented for payment a cash cheque for $3,000, drawn by a third party. The plaintiffs allege that by an act of inadvertence on the part of their cashier a sum of $30,000 was in fact paid instead of $3,000 as was written on the cheque.

The defendant denies that he received more than $3,000.

Before considering the evidence in detail it is important to consider the standard of proof that is required in a case of this nature. Clearly, if the defendant in fact retained $30,000, knowing that he had been overpaid $27,000, he was guilty of a fraudulent act.

Until the recent case of *Hornal v. Neuberger Products Ltd.* (1) it would seem that the position was uncertain (*vide Halsbury's* Laws of England 3rd Edition Volume 15 paragraph 496). In a case before the Judicial Committee of the Privy Council decided in 1939 (*New York v. Heirs of Phillips Decd.* (2)) Lord Atkin says:

"The only complaint made of the (learned Judge's) judgment in point of law is that he laid down that there was a heavy onus on the plaintiffs and that it was necessary for them to prove their case as clearly as they would have to prove it in a criminal proceeding. Their Lordships consider this criticism to be ill-founded. The proposition of the Judge has been laid down time and again in the Courts of this country: and it appears to be just and in strict accordance with the law."

Again in *Narayanan Chettyar & Anor. v. Official Assignee, Rangoon,* (3) at page 95 Lord Atkin says:

"There are other difficulties in the plaintiffs' way which have been sufficiently considered in the judgments of the High Court. Fraud of this nature, like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. The High Court were justified in holding that the trial Judge's finding was largely based on suspicion and conjecture."

There is however the recent case of *Hornal v. Neuberger Products Ltd.* (1) referred to in Mr. Cross's book on evidence at page 123 in the following terms:

"The Court of Appeal recognised that the earlier English cases conflicted, and concluded, in apparently general terms, that proof on a preponderance of probability will suffice when the commission of a crime is alleged in a civil action."

Upon examining the judgments in that case, however, it appears that the difference between the view therein expressed and that earlier expressed by Lord Atkin is not so wide as might at first appear. It would seem that neither of the two Privy Council cases to which I have referred to above were adverted to in the course of the *Hornal* case. (1)

Lord Justice Hodson at page 263 referred with approval to a passage in an earlier judgment of Lord Justice Denning in *Bater v. Bater,* (4) which reads as follows:

"The difference of opinion which has been evoked about the standard of proof in recent cases may well turn out to be more a matter of words than anything else. It is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. As Best C.J., and many other great Judges have said, 'in proportion as the crime is enormous, so ought the proof to be clear.' So also in civil cases, the case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion."

Morris L.J. said something to the same effect on page 266:

"But in truth no real mischief results from an acceptance of the fact that there is some difference of approach in civil actions. Particularly is this so if the words which are used to define that approach are the servants but not the masters of meaning. Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities. This view was denoted by Denning L.J. when in his judgment in *Bater v. Bater* he spoke of a 'degree of

probability which is commensurate with the occasion' and of 'a degree of probability which is proportionate to the subject-matter'."

Whatever the precise formula adopted and whatever the theoretical position may be, it has long been the practice in countries where the English system of law operates for the courts, in civil cases, to require a high standard of proof in cases where fraud is alleged.

On Saturday, the 21st of June, 1958 at about half past eleven in the morning, shortly before the closing of the bank for public business, the defendant presented a cheque, drawn by a third party, for the sum of $3,000. After presentation the cheque pursued what was stated in evidence to be the normal course of cash cheques through various officials of the bank to an enclosed space, or "cage," occupied amongst others by a Mr. Lim Lian Chai, whose duty it was to supervise the payments out of cash, and by a Miss Lucy Lee, who kept a records book.

It is unnecessary to refer in detail to the course that the cheque pursued before its return to the cage, as the precautions thereby prescribed were primarily for the purpose of ensuring that the account of the drawer was in sufficient credit to meet the cheque, or that the amount of the cheque was within the permitted limits of an overdraft, as was the case in regard to this particular cheque, Exhibit 2.

The procedure in the cage apparently was that upon presentation of a cash cheque, the person presenting the cheque was handed a numbered disc. Upon the cheque returning to the cage, after having been passed for payment by the examining members of the staff, the paying-out cashier called out the number of the disc relating to the particular cheque, whereupon the person who presented the cheque came forward and received his money.

On this morning Mr. Lim Lian Chai states that, as the bank was about to close and time was pressing, he himself called out the number of the appropriate disc, No. 63, and made the actual cash payment to the defendant, instead of following the normal practice which would have been for one of his assistants to have made the payment. He states that he misread the amount on the cheque and in fact handed out $30,000 instead of $3,000.

Examination of the cheque itself shows, in my opinion, that the figure $3,000, which appears in two places, is quite clear and the mistake was a surprising one. It would appear to be a practice of the plaintiff bank to permit cash cheques to be made out in the somewhat perfunctory form of Exhibit 2, that is to say without the amount being stated in words in the body of the cheque. Had the plaintiff bank followed what, I understand, is the general banking practice of insisting that cheques should be made out both in words and in figures, such a mistake as is alleged to have occurred in the present case could not possibly have arisen.

In his evidence in chief Mr. Lim Lian Chai stated that after calling out the number of the disc he asked the defendant how much money was due upon the cheque; and that the defendant replied "thirty thousand dollars." I do not believe this piece of evidence, which seems to me to be against all the probabilities. Moreover, at a later stage the witness himself in part resiled from this position. Apart from that, the plaintiffs' case was not so pleaded; and I am therefore accepting that the plaintiffs' true position is that an overpayment was inadvertently made, of which the defendant improperly took advantage.

Miss Lucy Lee, an accounting clerk within the cage, states that it was her duty to enter in her book the amount of payments made in respect of cash cheques when such amounts were called out to her by Mr. Lim. She states that with regard to this particular cheque (Exhibit 2) Mr. Lim called out "thirty thousand" and she thereupon made the appropriate entry. She states that shortly afterwards she herself inspected the cheque and saw that it was for $3,000 only.

Upon balancing her book, the alleged shortage was discovered and both her and Mr. Lim's books were amended to conform to the amount actually stated on the cheque in question.

While neither Mr. Lim Lian Chai nor Miss Lucy Lee impressed me with their efficiency as bank officials — and Miss Lee admitted two other mistakes in her book on the very morning in question — I would observe that I have no doubt of their integrity. Indeed I am satisfied that in their own minds both witnesses are convinced that the defendant was overpaid in the amount stated.

Counsel for the defendant in his final address submitted that the evidence as to the amount of the "float" on the day in question (i.e. $59,000) was inconclusive. I am not, however, determining the case upon that issue.

The defendant himself gave evidence on oath and denied that he received more than what was lawfully due on the cheque, that is to say

$3,000. He had moreover consistently adopted the same position from the moment that he was first confronted with the accusation on the very same afternoon.

While the defendant was not altogether a convincing witness, in the sense that he was evasive when questioned as to his means, he nevertheless adhered firmly enough to his denial. His character was put in issue and there is nothing known against him. Learned counsel for the plaintiffs suggests that the defendant's means were not as great as he would have led me to believe and that therefore it may reasonably be inferred that he was the kind of man who might have been prepared to take advantage of such a mistake as the bank contend took place on this occasion. If the fact that a person's financial standing is such that a windfall of $27,000 would not be unacceptable is a permissible consideration, it is surely one which must be applicable to a considerable proportion of the bank's customers. Be that as it may, whatever the means of the defendant, in such a case as this he can do nothing more in support of his position than deny that he was overpaid.

Can the plaintiff bank in such a case, in order to put the matter beyond mere suspicion or conjecture, do more than adduce what may be termed internal evidence of their employees? In my opinion, they can. It would, for example, be highly relevant in a case of this nature if the plaintiffs were able to establish some change for the better in the circumstances of the defendant, that he had, for instance, incurred unusual expenditure or had unexpectedly settled outstanding obligations. It may be that such evidence is difficult to obtain but it seems to me that where a defendant of good character is charged with a fraud of this nature something more is required than internal evidence of the bank's employees. In the absence of any such corroborative evidence I am not disposed to disbelieve the defendant's denial.

In all the circumstances of this unfortunate case, I consider that the loss, if any, should rest where it falls. I have already adverted to the practice of the plaintiff bank in permitting cash cheques to be presented and met without the amount being written in words in the body of the cheque. It is unfortunate, but for the purposes of this case irrelevant, that the actual financial loss which is alleged to have been incurred should fall not upon the plaintiff bank, whose procedures contributed to it, but upon a guarantor.

For all these reasons the plaintiffs' claim, in my opinion, must fail, and the action is dismissed with costs.

Action dismissed.

Solicitors: Drew & Napier; Braddell Bros.

YONG PAK YONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Good J.) June 16, 1959]

[Ipoh — Criminal Appeal No. 20 of 1959]

Criminal Law and Procedure — Corporal punishment — Imposition of, where no actual violence or brutality — Exercise of discretion — Judicial notice of what is notorious.

In this case the appellant, a youth of 20, was convicted of the offence of extortion and was sentenced by the learned President to two years' imprisonment and a whipping of 8 strokes. The appeal was against sentence only and was mainly directed to an appeal against the sentence of corporal punishment, being based on the ground that no actual violence was used by him in commission of the crime. In this case it was clear from the evidence that the appellant was an active member of a secret society.

Held: (1) in dealing with a matter of sentence as distinct from considering whether a person ought to be convicted or not of the offence the Courts are entitled to take judicial notice of what is notorious, of what everybody knows;

(2) in cases in which although no violence is actually used, or brutality actually shown, but where violence and brutality are undoubtedly involved (such as secret society extortion demands) the thug who has not had occasion to implement his threat of violence deserves corporal punishment just as much as if he had inflicted it.

Cases referred to:—

(1) *Ho Kin Luan & Anor. v. Public Prosecutor* [1959] M.L.J. 159, C.A.

(2) *Narasingerji Gyanagerji v. Panuganti Parthasaradhi* (1924) 51 I.A. 305; A.I.R. 1924 P.C. 226; I.L.R. 47 Mad. 729; 27 Bom. L.R. 4; 29 C.W.N. 246.

CRIMINAL APPEAL.

R. C. M. Rayan for the appellant.

Raja Azlan Shah (Deputy Public Prosecutor) for the respondent.

Good J. delivering oral judgment: The appellant in this case was convicted of the offence of extortion and was sentenced by the learned President of the Sessions Court, Ipoh to two years' imprisonment, and a whipping of 8 strokes. The appeal is against sentence only and is mainly directed to an appeal against the sentence of corporal punishment, being based on the ground that no actual violence was used by